

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DEON CRAIG,	:
Plaintiff	:
v.	: Case No. 3:08-cv-46-KRG-KAP
LT. BOYLAN, S.C.I. SOMERSET,	:
<u>et al.</u> ,	:
Defendants	:

MEMORANDUM ORDER

This matter was referred to Magistrate Judge Keith A. Pesto for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and subsections 3 and 4 of Local Rule 72.1 for Magistrate Judges.

The Magistrate Judge filed a Report and Recommendation on December 23, 2009, docket no. 51, recommending that defendants' motion for summary judgment on plaintiff's remaining claims, docket no. 47, be granted because the plaintiff failed even to attempt to controvert the defendants' evidence that plaintiff had neither suffered a constitutionally significant injury as to the Eighth Amendment claim) nor exhausted his administrative remedies as to the First Amendment claim. Contrary to defendants' analysis, the lack of evidence of injury results in a failure of plaintiff's Eighth Amendment claim, not merely a limitation on damages, because in the absence of injury:

[t]here exists some point at which the degree of force used is so minor that a court can safely assume that no reasonable person could conclude that a corrections officer acted maliciously and sadistically.

Reyes v. Chinnici, 54 Fed.Appx. 44, 48 (3d Cir.2002) (affirming summary judgment in favor of a corrections officer who allegedly punched a handcuffed prisoner.)

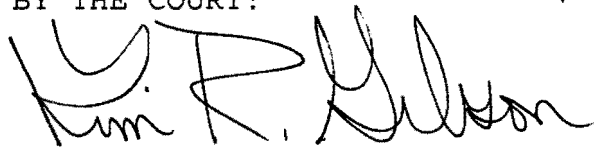
The parties were notified that, pursuant to 28 U.S.C. § 636(b)(1), they had ten days to file written objections to the Report and Recommendation. No one has filed objections and the time to do so has expired. As Fed.R.Civ.P. 56(e)(2) provides, summary judgment should be entered where a party fails to respond to a sufficiently supported motion.

Upon review of the record of this matter and the Report and Recommendation, and noting the lack of timely objection to the Report and Recommendation, the following order is entered:

AND NOW, this 13<sup>th</sup> day of January 2010, it is

ORDERED that defendants' motion for summary judgment, docket no. 47, is granted. The Report and Recommendation is adopted as the opinion of the Court. The Clerk shall mark this matter closed.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kim R. Gibson", written over a horizontal line.

KIM R. GIBSON,  
UNITED STATES DISTRICT JUDGE

Notice by ECF to counsel of record and by U.S. Mail to:

Deon Craig GZ-5255  
S.C.I. Somerset  
1600 Walters Mill Road  
Somerset, PA 15510